IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ARTHUR JOHNSON	:	
Plaintiff,	:	**Case No.**
v.	:	
JOHN WETZEL, Secretary of the Pennsylvania Department of Corrections (DOC); SHIRLEY MOORE-SMEAL, Executive Deputy Secretary of the DOC; MICHAEL WENEROWICZ, Regional Deputy Secretary of the DOC; BRENDA TRITT, Superintendent SCI Frackville; JAMES MEINTEL, Deputy Superintendent SCI Frackville; ANTHONY KOVALCHIK, Deputy Superintendent SCI Frackville	:	**ELECTRONICALLY FILED** **JURY TRIAL DEMANDED**
Defendants.		

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ARTHUR JOHNSON **Plaintiff,** **v.** **JOHN WETZEL, Secretary of the Pennsylvania Department of Corrections (DOC); SHIRLEY MOORE-SMEAL, Executive Deputy Secretary of the DOC; MICHAEL WENEROWICZ, Regional Deputy Secretary of the DOC; BRENDA TRITT, Superintendent SCI Frackville; JAMES MEINTEL, Deputy Superintendent SCI Frackville; ANTHONY KOVALCHIK, Deputy Superintendent SCI Frackville** **Defendants.**	:	**Case No.** **ELECTRONICALLY FILED** **JURY TRIAL DEMANDED**

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

The Pennsylvania Department of Corrections ("DOC") placed plaintiff, Mr. Arthur Johnson ("Mr. Johnson") in solitary confinement when Jimmy Carter was President. For the past 36 years, it has held him in solitary confinement with no reasonable justification. Each day he remains segregated inflicts substantial and irreparable harm. The extreme conditions and length of his confinement, taken together, constitute cruel and unusual punishment in violation of the Eighth and

Fourteenth Amendments of the U.S. Constitution[1] and therefore are actionable under 42 U.S.C. § 1983. Excessive solitary confinement—without a legitimate penological purpose, and there is none here—offends public policy and violates substantive due process.

An injunction is necessary to prevent defendants from continuing to inflict permanent harm on Mr. Johnson. Mr. Johnson requests, pursuant to Fed. R. Civ. P. 65(a), this Court issue a preliminary injunction mandating Defendants: (1) begin a court-approved "step down" process to provide him with immediate social interaction and environmental stimulation, and quickly reintegrate Mr. Johnson into general population; and (2) provide appropriate counseling to begin to address the serious psychological effects that Mr. Johnson is experiencing as a result of his more than three decades in isolation.

II. STATEMENT OF FACTS

The DOC placed Mr. Johnson in solitary confinement on December 22, 1979 for his alleged participation in a prison escape attempt at SCI Pittsburgh. (Ex. B, Johnson Decl. ¶ 4). He was 26 years old. Aside from a period of less than 6 months between late 1989 and early 1990 which Mr. Johnson spent in a United States Bureau of Prisons ("BOP") facility, Mr. Johnson has remained in solitary

[1] Mr. Johnson also asserts that Defendants have violated his Due Process rights under the Fifth and Fourteenth Amendments, but that claim is not the subject of this motion.

confinement ever since—**for over 36 years**. (*Id.* ¶¶ 4-14). Mr. Johnson, now 63 years old, is in solitary confinement in the Restricted Housing Unit ("RHU") at the Pennsylvania State Correctional Institution at Frackville ("SCI Frackville").

Mr. Johnson spends 23 hours a day, or more, in a 7 by 12 foot cell. (*Id.* ¶¶ 16, 19). He leaves his cell only to shower alone in a stall for 10 minutes, three times per week, and for outdoor "recreation," alone in a cage about the same size of his cell for one hour, five days per week, weather permitting. (*Id.* ¶ 18). If weather does not permit outdoor "recreation," Mr. Johnson is not offered indoor "recreation," but remains in his cell for 24 hours that day. Mr. Johnson is not given access to exercise equipment.

Mr. Johnson's cell has been illuminated 24 hours a day, every day, for the past 36 years. (*Id.* ¶ 17). Since 1995, his cell door has been solid with only a single thin window. (*Id.* ¶ 26). Mr. Johnson cannot speak to other inmates, as doing so requires yelling to the next cell, which is forbidden. (*Id.* ¶¶ 27-28). He is allowed a limited number of phone calls per month (sometimes as few as one), and all his visits are non-contact. (*Id.* ¶ 24). Aside from incidental contact with prison staff, which includes mandatory strip searches when he leaves his cell, Mr. Johnson has not touched another person in 36 years. (*Id.* ¶¶ 23-25).

The shocking length of time Mr. Johnson has endured these inhumane conditions has left him with a number of debilitating physical, psychological, and emotional maladies. As Plaintiff's expert, Dr. Craig Haney, points out in his report, attached hereto as Exhibit A, Mr. Johnson suffers from crippling anxiety, memory loss, loss of empathy, inability to concentrate, and depression. (Haney Decl. ¶¶ 19-21). Mr. Johnson struggles to get out of bed each morning, but also has difficulty sleeping. (Johnson Decl. ¶¶ 33-34). He cannot concentrate to write detailed letters, or read a book—once his favorite pastimes—and suffers from short-term memory loss. (*Id.*¶¶ 36-38). He fights depression and feels hopeless about the future. Drawing on his decades of experience and research in to solitary confinement, Professor Haney opines: "Mr. Johnson's situation is almost unique in its severity." (Haney Decl. ¶ 18).

Defendants lack any legitimate penological purpose for Mr. Johnson's continued solitary confinement. Mr. Johnson has not had a serious disciplinary infraction for over 25 years. (Johnson Decl. ¶ 44). Despite repeated requests, Defendants have not explained why he continues to be housed in solitary confinement, or how he may secure release to general population. (*Id.* ¶¶ 42-43). Mr. Johnson is committed to participating in whatever program is necessary to re-enter general population. (*Id.* ¶ 51). His nightmare must end.

III. STATEMENT OF THE QUESTIONS INVOLVED

A. Whether Mr. Johnson is likely to succeed on the merits of his Eighth Amendment claim.

Suggested Answer: Yes.

B. Whether Mr. Johnson is suffering, and will continue to suffer, irreparable harm if a preliminary injunction is denied.

Suggested Answer: Yes.

C. Whether the balance of the equities and public policy favor granting the requested preliminary injunction in favor of Mr. Johnson.

Suggested Answer: Yes.

IV. ARGUMENT

"A party seeking a preliminary injunction must show: (1) a likelihood of success on the merits; (2) that it will suffer irreparable harm if the injunction is denied; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief." *Kos Pharms., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004) (citing *Allegheny Energy, Inc. v. DQE, Inc.*, 171 F.3d 153, 158 (3d Cir. 1999)). Here, all of these factors favor a preliminary injunction.

A. Mr. Johnson is likely to succeed on the merits.

The Court's first inquiry is whether Mr. Johnson has a "reasonable probability of success on the merits." *Allegheny Energy, Inc.*, 171 F.3d at 158. To meet this burden, the moving party must present "sufficient evidence to satisfy the essential elements of the underlying cause of action." *Stilp v. Contino*, 629 F. Supp. 2d 449, 457 (M.D. Pa. 2001). "The mere possibility that the claim might be defeated does not preclude a finding of probable success." *Id.* Mr. Johnson is likely to succeed on the merits of his Eighth Amendment claim under 42 U.S.C. § 1983, as his three-and-a-half decades of incarceration in solitary confinement constitutes cruel and unusual punishment.

Conditions of prisoner confinement are subject to Eighth Amendment scrutiny. *Farmer v. Brennan*, 511 U.S. 825, 832-34 (1994). Pursuant to the Eighth Amendment's prohibition on cruel and unusual punishment, prison officials must ensure inmates are held in "humane" conditions. *Id.* at 832 The Supreme Court has set forth a two-pronged inquiry. *Id.* at 834. First, the conditions to which a prisoner is subjected must be objectively "serious,"—a denial of "the minimal civilized measure of life's necessities" or posing a "substantial risk of serious harm." *Id.* at 834. Second, the prison official must be subjectively culpable—showing "'deliberate indifference to inmate health or safety.'" *Id.*

To satisfy the objective component, a plaintiff must show a deprivation of a single, identifiable human need, such as health, safety, or exercise. *Wilson v. Seiter*, 501 U.S. 294, 304 (1991). A court may also consider a combination of conditions if the combination produces a "mutually reinforcing effect" resulting in a deprivation of a single, identifiable human need. *Id.* The Eighth Amendment also protects against future harm, where conditions "pose an unreasonable risk of serious damage to [the prisoner's] future health." *Helling v. McKinney*, 509 U.S. 25, 35 (1993).

The subjective component requires prison officials be deliberately indifferent to the identified deprivations or risks. *Farmer*, 511 U.S. at 834. A defendant is deliberately indifferent when he or she "knows of and disregards" a deprivation or "an excessive risk to inmate health or safety." *Id.* at 837. To disregard a deprivation or risk means to "fail[] to take reasonable measures to abate it." *Id.* at 847.

Prison officials cannot "choose to remain deliberately indifferent to an excessive or substantial or serious risk of harm to inmates." *Coble v. Damiter*, Civ. No. 3:11-CV-1276, 2012 WL 3231261, *8-*9 (M.D. Pa. June 27, 2012). Accordingly, courts properly infer deliberate indifference when the plaintiff proves the risk or deprivation was "obvious." *Farmer*, 511 U.S. at 842.

1. Mr. Johnson's excessively lengthy incarceration in solitary confinement has deprived him of basic human needs.

"The length of confinement [in isolation] cannot be ignored in deciding whether confinement meets constitutional standards." *Hutto v. Finney*, 437 U.S. 678, 686 (1978); *Nami v. Fauver*, 82 F.3d 63, 67 (3d Cir. 1996) (considerations relevant to the Eighth Amendment test "include the length of confinement, the amount of time prisoners must spend in their cells each day, sanitation, lighting, bedding, ventilation, noise, education and rehabilitation programs, opportunities for activities outside of cells, . . ."); *Young v. Quinlan*, 960 F.2d 351, 364 (3d Cir. 1992) (*superseded by statute on other grounds*) ("The *duration* and conditions of segregated confinement cannot be ignored in deciding whether such confinement meets constitutional standards."); *Peterkin v. Jeffes*, 855 F.2d 1021, 1025 (3d Cir. 1988) ("objective factors which a court must examine in prison conditions cases include basic human needs such as . . . length of confinement, and out-of-cell time."). Solitary confinement in any duration—and particularly in an extreme duration such as this—deprives inmates of the basic human needs of social interaction, environmental stimulation, mental health, sleep, and exercise. (Haney Rpt. ¶¶ 87-91). Mr. Johnson has endured these deprivations for 36 years. Mr. Johnson, therefore, satisfies the objective component of an Eighth Amendment claim. *See Wilkerson v. Stalder*, 639 F. Supp. 2d 654, 679 (M.D. La. 2007).

(a) Mr. Johnson has been deprived of the basic human needs of social interaction and environmental stimuli.

Defendants have deprived Mr. Johnson of all human interaction and environmental stimulation for more than three decades. As set forth above, Mr. Johnson spends no less than 23 hours per day in his cell, alone. (Johnson Decl. ¶¶ 15). He takes all his meals there, alone. (*Id.* ¶ 21). He is not permitted to touch any visitors, ever; and aside from strip searches and other incidental contact with his captors, he has not touched another human for over 36 years. (Haney Rpt. ¶ 144; Johnson Decl. ¶¶ 24-25). Mr. Johnson's entire immediate family is deceased, and he only learned of his loved ones, deaths through letters from other family members. (Haney Rpt. ¶ 114-145). He was given no bereavement phone calls, and was left to mourn these losses alone in his cell. (Haney Rpt. ¶ 145).

Since 1995, Mr. Johnson's cell door has been solid with windows permitting only a constricted peak into the hall. (Johnson Decl. ¶ 26). For the past 21 years, he only sees other inmates when he is moved quickly through general population. He showers alone, exercises (such as it is) in a cage alone, is not permitted to participate in prison programs, and is not permitted to speak with other inmates. (*Id.* ¶¶ 15-22).

Social interaction and environmental stimulation are basic human needs. *Wilkerson*, 639 F. Supp. 2d at 677-678, *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 914-15 (S.D. Tex. 1999) *rev'd on other grounds*, 243 F. 3d 941 (5th Cir. 2001), *adhered to on remand* 154 F. Supp 2d 975 (S.D. Tex 2001), *Shoatz v. Wetzel*, No. 2:13-cv-0657, 2016 WL 595337 at *8 (W.D. Pa. 2016) (summary judgment denied after finding plaintiff produced sufficient evidence that "over 22 years in consecutive solitary confinement constitutes a sufficiently serious deprivation of at least one basic human need, including but not limited to sleep, exercise, social contact and environmental stimulation.").

The almost total limitation on human interaction imposed on Mr. Johnson over several decades is a deprivation of what it means to be human.[2] As the *Wilkerson* court stated: "The cumulative effect of over 28 years of confinement in lockdown [in solitary confinement] constitutes a sufficiently serious deprivation of at least one basic human need, including but not limited to sleep, exercise, social contact and environmental stimulation. It is obvious that being housed in isolation in a tiny cell for 23 hours a day for over three decades results in serious deprivations of basic human needs." *Wilkerson*, 639 F. Supp. 2d at 679.

Just as in *Wilkerson*, Mr. Johnson was held in isolation (save for several weeks in a BOP facility) "in a tiny cell for 23-24 hours per day for over three decades." *Id.* As in *Wilkerson*, he has, by that very fact, "obvious[ly]" been deprived of basic human needs. *Id.*

(b) The Isolation Imposed On Mr. Johnson for Over Three Decades Has Seriously Harmed His Mental Health

Mr. Johnson's pervasive isolation has lead to cognitive impairment, chronic depression, emotional pain and suffering, and other psychological harms. (Haney

[2] *See* Haney Rpt. ¶¶ 47-51 (summarizing scientific research demonstrating humans have a basic "need to connect"). *See also* Mathew Lieberman, Social: Why are Brains are Wired to Connection (2013); Laura Matter, *Hey, I think We're Unconstitutionally Alone Now: The Eighth Amendment Protects Social Interaction as a Basic Human Need*, 14 J. Gender Race & Justice 265, 290-91 (2010) (summarizing research on fundamental role of social interaction in human cognition).

Rpt. ¶¶ 141-150). Various courts have found the Eighth Amendment protects against segregation that causes a serious deprivation of mental health over a prolonged period. *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 914 (S.D. Tex. 1999) ("extreme levels of psychological deprivation" cause "pain and suffering," (*reversed on other grounds*)); *Wilkerson supra*, *Shoats supra*, *Ashker v. Brown*, No. 4:09-cv-5796, Dkt. No. 191, Order Denying Mot. to Dismiss, *9 (N.D. Cal. Apr. 9, 2013) ("Plaintiffs' asserted injuries --- the symptoms of which include 'chronic insomnia,' 'severe concentration and memory problems," 'anxiety,' and other ailments – are sufficient to satisfy the objective component of their Eighth Amendment claim, considering the length of Plaintiffs' exposure to these conditions.").

Quite understandably, Mr. Johnson suffers from increasing hopelessness, depression and anxiety, declining short-term memory, and an inability to perform even basic mental tasks such as reading and writing, for more than a few minutes. (Haney Rpt. ¶¶ 21, 146-150; Johnson Decl. ¶¶ 30-33, 37). All of these symptoms, suffered over 36 years in isolation, demonstrate a serious deprivation of mental health—an established identifiable human need.

(c) Mr. Johnson's grossly excessive time in solitary confinement has deprived him of sleep, resulting in long-term psychological damage.

Mr. Johnson has increasingly crippling insomnia as a result of his isolation. (Haney Rpt. ¶ 149; Johnson Decl. ¶ 34). A light remains on *inside* Mr. Johnsons' cell 24 hours per day. (Johnson Decl. ¶ 17). He wakes frequently and has difficulty falling back asleep, sleeping at most only four to five hours every night. "[S]leep undoubtedly counts as one of life's basic needs." *Harper v. Showers*, 174 F.3d 716, 720 (5th Cir. 1999). Deprivation of sleep, coupled with the other deprivations to which he is subjected, constitutes a deprivation of an identifiable human need.

(d) Mr. Johnson's lack of exercise and severely limited movement has negatively affected his health.

Mr. Johnson cannot maintain his basic physical health. He spends no less than 23 hours per day in an 84 square foot cell. Most of his cell is taken up by a bunk, sink, toilet and a desk. There is little space for movement of any kind. Mr. Johnson is not provided with exercise equipment. Aside from showers, Mr. Johnson leaves his cell a maximum of 5 times per week, one hour each time, for outdoor "recreation" in an outdoor cage roughly the size of his cell. This only occurs weather permitting and if the prison is not on lockdown. During outdoor "recreation," Mr. Johnson is not provided exercise equipment. (Johnson Decl.

¶ 20). If outdoor "recreation" is cancelled, there is no opportunity for indoor "recreation." Mr. Johnson is left in his cell.

Mr. Johnson cannot walk, run, or exercise in any way essential to physical health. This is a deprivation of an identifiable human need, both on its own and in conjunction with the other deprivations detailed herein. The Third Circuit has held that the amount of time that a prisoner spends out of his cell is a critical factor in assessing whether his confinement violates the Eighth Amendment. *Peterkin*, 855 F.2d at 1025 (listing "how much time prisoners must spend in their cells each day" and "the opportunities for inmate activities outside of the cells" as factors "we must consider." (internal quotation marks and citations omitted)); *Union Cnty. Jail Inmates v. Di Buono*, 713 F.2d 984, 1000 (3d Cir. 1983). Mr. Johnson's extended confinement in RHU raises serious Eighth Amendment issues.

2. Defendants are deliberately indifferent to the deprivations of Mr. Johnson's basic human needs and the substantial risk of serious harm to his health from his extended solitary confinement.

Deliberate indifference can be inferred when the risk of harm is obvious. *Farmer*, 511 U.S. at 842. As noted by the court in *Wilkerson*, the risks of **36 years** in solitary confinement are so obvious no reasonable person can claim to be unaware of them. *Wilkerson*, 639 F. Supp. 2d at 679. Accordingly, this Court can and should infer that Defendants know the risks posed by prolonged solitary confinement.

The ruinous effects of long term isolation are not new or unknown concepts, nor are they debated. (Haney Rpt. ¶¶ 25-26, ¶¶ 30-76). The United Nations has called for all countries to ban solitary confinement in excess of 15 days, saying "the severe mental pain or suffering solitary confinement may cause, it can amount to torture or cruel, inhuman or degrading treatment or punishment." *UN Special Rapporteur on torture calls for the prohibition of solitary confinement*, United Nations Human Rights Office of the High Commissioner (Oct. 18, 2011), www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11506&LangID=E. The negative effects of prolonged solitary confinement are widely researched and reported on in both scientific journals and the mainstream media.[3]

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[3] *See, e.g.*, Erica Goode, *Solitary Confinement: Punished for Life*, N.Y. Times, Aug. 3, 2015, at D1; Atul Gawande, *Hellhole: The United States Holds tens of thousands of inmates in long-term solitary confinement. Is this torture?*, The New Yorker, March 30, 2009; Jason Stromberg, *The Science of Solitary Confinement: Research tells us that isolation is an ineffective rehabilitation strategy and leaves lasting psychological damage*, Smithsonian Magazine, www.smithsonianmag.com/science-nature/science-solitary-confinement-180949793/?no-ist (Feb. 19, 2014); Stuart Grassian and Nancy Friedman, *Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement*, Int'l J. of Law and Psychiatry v. 8, issue 1 at 49-56 (1986); Richard H. Walters, John E. Callagan, and Albert F. Newman, *Effect of Solitary Confinement on Prisoners*, The American Journal of Psychiatry, v. 119, issue 8 at 771-771 (1963); Kirsten Weir, *Alone, in 'the hole': Psychologists probe the mental health effects of solitary confinement*, Monitor on Psychology v.43, no. 5 at 54 (May 2012).

Indeed, the psychological effects of extreme isolation have been discussed since at least the 1960s,[4] with the first extensive U.S. study published in 1983. Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 Am. J. Psychiatry 1450 (1983). Dr. Grassian's study, conducted using volunteer long-term prisoners, and placing them in solitary confinement cells for period of mere days, found solitary confinement leads to "perceptual distortions, hallucinations, hyperreponsivity to external stimuli, aggressive fantasies, overt paranoia, inability to concentrate, and problems with impulse control." *Id.* All of this illustrates the obvious and well-known nature of the serious negative ramifications of 36 years of isolation. Accordingly, this Court may assume Defendants possess such knowledge.

Despite this knowledge, Defendants hold Mr. Johnson in isolation without penological purpose. Mr. Johnson has not been accused of a violent, or even serious, disciplinary infraction for over 25 years. (Johnson Decl. ¶ 44). Since the 1980s, Mr. Johnson has been accused of three minor infractions. (*See id.* ¶¶ 45-48). While Mr. Johnson's records indicate he expressed a desire to leave prison more

[4] *See* Stephen J. Suomi, Harry F. Harlow, and S. David Kimball, *Behavioral Effects of Prolonged Partial Social Isolation on the Rhesus Monkey*, Psychological Reports 29, at 1171-1177 (1971) ("Prolonged social isolation has long been thought to predispose psychopathological behavior in humans. In monkeys, this hypothesis has been verified empirically (Harlow & Harlow, 1962; Mason & Sponholz, 1963; Rowland, 1964 . . .).")

than ten years ago, he recognizes that any ability to leave prison must come through the courts. (*See id.* ¶ 49). Further, the same therapists who wrote reports of his desire to leave prison began the process of transitioning Mr. Johnson out of isolation. (Ex. C. (records showing transition recommended)).

When Mr. Johnson has asked why he remains in solitary after decades of good conduct, Defendants have presented no basis beyond thirty-year-old disciplinary infractions. (*See* Haney Rpt. ¶ 90; Johnson Decl. ¶ 42). That these decades-old infractions remain the sole basis for his isolation is supported by Mr. Johnson's review record, which offers only incidents in 1979 and 1984 as bases for refusal to release him to general population. (*See, e.g.*, Ex. D. 8/19/2013 Annual RHU psychological report; *see also* Haney Rpt. ¶¶ 92-111 (noting bases for refusal to release Mr. Johnson to general population and reliance upon 20 year old incidents)). Many of the reports in Mr. Johnson's file even note "[g]ood housing reports," indicating Mr. Johnson demonstrates positive inmate behavior. (Ex. E).

Mr. Johnson now acknowledges his upbringing and thought processes upon arrival in prison are likely the cause of past inappropriate behavior, and success in the prison system requires he abandon the lessons of his childhood. (Haney Rpt. ¶ 86). Such a recognition is strong evidence Mr. Johnson now possesses the tools

(continued…)

necessary for a successful re-entry to general population. However, Mr. Johnson is, and will always be, powerless to change incidents that occurred and mistakes he made in his youth. (*See id.* ¶ 103). The DOC's reliance upon these incidents to refuse to release Mr. Johnson to general population indicates its readiness to hold him in solitary confinement for the rest of his life, regardless of his current or future behavior.

Under the DOC's administrative custody policy, each Defendant plays a role in determining Mr. Johnson's continued solitary confinement. (*See* Ex. F, DC-ADM 8012 §§ 1(C) & 4(B)). Mr. Johnson is on DOC's Restricted Release List ("RRL"). (*Id.*). Since 2012, DOC provides RRL prisoners with an annual review of their RRL status. (*Id.*). While all defendants cast a vote as to whether Mr. Johnson will remain in solitary confinement, the ultimate decision is made by Secretary Wetzel. (*Id.*) Since 2012, Defendant Wetzel has continued Mr. Johnson's isolation despite his knowledge that he has been in isolation since 1979, that such extraordinarily long solitary confinement is inherently harmful, and that any penological basis for his isolation expired long ago. Defendant Wetzel has never provided Mr. Johnson with any notice of the reasons for his continued solitary confinement. This is the height of deliberate indifference.

The evidence shows Mr. Johnson has satisfied all elements of his Eighth Amendment claim. He suffers deprivations of identifiable human needs, and

Defendants are deliberately indifferent to these deprivations. The serious deprivations caused by 36 years in isolation, which include deprivations of mental and physical health, human interaction and environmental stimulation, and sleep, are so obvious Defendants cannot claim to be ignorant of them. Despite their knowledge, Defendants continue to hold Mr. Johnson in isolation without penological purpose. Mr. Johnson is likely to succeed on the merits of this Eighth Amendment claim.

B. Mr. Johnson is suffering irreparable harm that will be exacerbated if the injunction is denied.

Professor Haney's report documents the irreparable harm Mr. Johnson suffers each day. Mr. Johnson is exceptionally resilient, but the excessive period he has endured in solitary confinement has broken him down to the point that continued isolation will lead to irreparable mental harm. (Haney Rpt. ¶ 146). Long-successful coping techniques involving hope for the future and turning to books and other outlets to pass time, have begun to fail as Mr. Johnson is given no explanation for his continued residence in RHU, and no hope of ever being released. (*Id.* ¶¶ 146-150). He is experiencing increasing hopelessness, depression, and feelings of an impending mental breakdown he cannot control. (*Id.*) Mr. Johnson's advancing age makes him even more susceptible to irreversible mental decline due to his isolation. (*Id.* ¶¶ 148,154). Mr. Johnson's fragile psychological state is at a critical point. Should this Court deny this motion for preliminary injunction, Mr. Johnson's complete and irreversible mental collapse is inevitable.

Despite being in extreme isolation for over 36 years, the DOC has not provided Mr. Johnson with more than cursory and superficial mental health attention. As outlined in detail in Section VI of Professor Haney's Report, DOC's practice is to provide routine, "cell front" well-being checks as the primary means of monitoring Mr. Johnson's mental health. (*Id.* ¶ 114). Any more in-depth examinations have been superficial, the results being little more than foregone conclusions. (*Id.* ¶¶ 112-40). Many of the reports from these "examinations" simply quote verbatim previous examination reports, and a few even refer to Mr. Johnson by the wrong name. (*Id.* ¶ 135).

These "examinations" fall woefully short of what Mr. Johnson requires to remedy the extreme harm Defendants have caused through their inexplicable refusal to release him from isolation for 36 years. (*Id.* ¶ 140). Mr. Johnson is in need of intensive and personalized therapy in order to begin to reverse the psychological wounds Defendants have inflicted upon him. A refusal to grant a preliminary injunction will result in a continued failure to address his serious and declining mental health issues: an irreparable harm that cannot be denied.[5]

[5] The violation of a constitutional right in and of itself can constitute irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir. 1984) ("'When an alleged deprivation of a

C. The balance of equities and the public interest favor Mr. Johnson

The third and fourth factors also favor Mr. Johnson. Mr. Johnson has demonstrated he will suffer severe and irreparable harm in violation of the U.S. Constitution absent an injunction. *See supra* Parts I & II. In contrast, there is no burden on Defendants in transferring Mr. Johnson to general population and providing him with needed counseling. Housing prisoners in general population when there is no basis to keep them isolated is part of the DOC's day-to-day job. The DOC is also required, as a general matter, to provide prisoners with needed health services—most especially when the ailment at issue was caused by the DOC. Mr. Johnson is asking for nothing more than for the DOC to act as the Constitution requires.

With regard to public policy, the Third Circuit has determined that "if a plaintiff demonstrates both a likelihood of success on the merits and irreparable injury, it almost always will be the case that the public interest will favor the plaintiff." *AT&T v. Winback & Conserve Program*, 42 F.3d 1421, 1427 n. 8 (3d Cir. 1994). Moreover, "'it is always in the public interest to prevent the violation of a party's constitutional rights.'" *Buck v. Stankovic*, 485 F. Supp. 2d 576, 586-87 (M.D. Pa. 2007) (quoting *G&V Lounge v. Michigan Liquor Control Comm'n*, 23

(continued…)

constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.'" (quoting 11 C. Wright & A. Miller, Federal

F.3d 1071, 1079 (6th Cir. 1994) (citing *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 383 (1979)).

More specifically, that public policy is against long term solitary confinement without penological justification is clear. Justice Kennedy recently recognized the "human toll wrought by extended terms of solitary confinement," and that it may be time for the courts to find "workable alternative systems" for long term solitary confinement. *Davis v. Ayala*, 135 S. Ct. 2187, 2208-10 (2015) (Kennedy, J. concurring). He noted, succinctly: "[y]ears on end of near-total isolation exact a terrible price." *Id.* Mr. Johnson has paid that price for decades.

Statements from the correctional community itself also demonstrate public policy is strongly in favor of Mr. Johnson's release from solitary confinement. The American State Correctional Association ("ASCA"), of which Defendant Wetzel is an officer, recently released a statement indicating the need to reduce, if not eliminate, long term solitary confinement. (Ex.G, ASCA Statement). In the summer of 2015, Defendant Wetzel himself defined long-term solitary confinement as "[a]nything longer than 14 days", and shared an expectation that "we may see a capping of time an individual can be housed in restricted housing [i.e. solitary confinement]." (Ex. H, Correctional Newsfront: Official Newsletter

(continued…)
Practice and Procedure, § 2948, at 440 (1973)).

of PA DOC, July to September 2015, at 21-25). He also discussed reviewing current conditions in solitary confinement to consider more programming, out-of-cell time, visits, telephone and technology use. (*Id.*).

V. CONCLUSION

"The degree of civilization in a society can be judged by entering its prisons." Fyodor Dostoyevsky, *The House of the Dead* (1862). Defendants have inflicted a fearsome toll on Mr. Johnson long after any arguably legitimate interest in doing so has evaporated. Mr. Johnson lost contact with other humans before the internet, cell phones, or the fall of the Soviet Union. The time to end his isolation is now. For the foregoing reasons, Plaintiff Arthur Johnson's motion for a preliminary injunction to end both his continued isolation and to provide affirmative psychological and social support to counteract the DOC has inflicted upon him should be granted.

Date: May 12, 2016

Respectfully submitted,

/s/ *Bret Grote*

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CERTIFICATE OF COMPLIANCE OF BRIEF LENGTH

I hereby certify that the foregoing Brief in Support of Plaintiff Arthur Johnson's Motion for Preliminary Injunction measures 4,883 words in length, including footnotes, and excluding the Tables of Contents and Authorities and the Certificates of Compliance and Service, and thus complies with the 5,000 word count limitation set forth in L.R. 7.8(b). This word count is based upon the word count feature in Microsoft Office Word 2007.

Dated: May 12, 2016

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CERTIFICATE OF SERVICE

I hereby certify that, on May 12, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and served the following by statutory overnight delivery and certified U.S. mail as follows:

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